

c. Whenever the results of the consultation process include recommendations by the Area Manager, FWS, or Regional Director, NMFS, for modifications to the project which would enhance the conservation and protection of a listed species or its critical habitat, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe the recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

d. Whenever the appropriate Area Manager, FWS, or Regional Director, NMFS, determines that the proposal is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the FmHA or its successor agency under Public Law 103-354 applicant shall be so informed and the project denied on this basis. However, if the State Director believes that funding or approval of the application is (i) of national, regional, or great local significance, and (ii) that there are no reasonable and prudent alternatives to avoiding the listed species impact, the State Director can request the Administrator, through PSS, to review the proposal and the results of the consultation process. Based upon this review, the Administrator shall either inform the State Director that a request for an exemption from section 7 of the Endangered Species Act is not warranted and the application shall be denied or, if the Administrator believes it is warranted, shall request an exemption from the Endangered Species Committee established by section 7(e) of the Act. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of the exemption request.

9. Once completed, the consultation process shall be reinitiated by FmHA or its successor agency under Public Law 103-354 or upon request of the appropriate Area Manager, FWS, or Regional Director, NMFS, if:

a. New information or modification of the proposal reveals impacts that may affect listed or proposed species or their habitats; or

b. A new species is listed that may be affected by the proposal.

10. In completing the above compliance procedures, particularly when consulting with the referenced agencies, formally or informally, the preparer of the environmental review document will request information on whether any Category I or Category II species may be present within the project area. These are candidate species; they are presently under consideration for listing under section 4 of the Endangered Species Act. Cat-

egory I species are those for which FWS currently has substantial data on hand to support the biological appropriateness of proposing to list the species as endangered or threatened. Currently data are being gathered concerning essential habitat needs and, for some species, data concerning the precise boundaries of critical habitat designations. Development and publication of proposed rules on such species is anticipated. Category II comprises species for which information now in the possession of the FWS indicates that proposing to list the species as endangered or threatened is possibly appropriate but for which conclusive data on biological vulnerability and threat(s) are not currently available to presently support proposed rules. Whenever a Category I or II species may be affected, the preparer of the environmental review document will determine if the proposed project is likely to jeopardize the continued existence of the species. Whenever this determination is made, the same compliance procedures specified in paragraph 6 of this exhibit for a proposed species will be followed. The purpose of the requirements of this paragraph is to comply with the National Environmental Policy Act as well as Departmental Regulation 9500-4, Fish and Wildlife Policy, which specifies that USDA agencies will avoid actions which may cause a species to become threatened or endangered.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

EXHIBIT E TO SUBPART G OF PART 1940— IMPLEMENTATION PROCEDURES FOR THE WILD AND SCENIC RIVERS ACT

1. Each application for financial assistance or subdivision approval as well as the proposed disposal of real property by FmHA or its successor agency under Public Law 103-354 shall be reviewed to determine if it will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior. The Nationwide Inventory identifies those river segments that, after preliminary review, appear to qualify for inclusion in the system. (For purposes of this subpart, river segments in the Nationwide Inventory shall be treated the same as segments within the system with the exception of paragraph 8.) For applications subject to environmental assessments, the review shall be accomplished as part of the assessment. For applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA or its successor agency under Public Law 103-354 1940-

22, "Environmental Checklist For Categorical Exclusions," within the reviewing office and shall be accomplished as early as possible after receipt of the application and prior to approval of the application. The FmHA or its successor agency under Public Law 103-354 official responsible for completing the environmental assessment shall accomplish this review. (See §1940.316 of this subpart.)

2. In order to effectively implement this review, State Directors shall ensure that State, District and County Offices maintain current listings of rivers within their respective States that are included in or designated for potential addition to the system as well as those identified in the Nationwide Inventory prepared by NPS.

3. For applications for water resources projects, as defined in §1940.302(i) of this subpart, the purpose of this review shall be to determine whether the proposal would have a direct and adverse effect on the values which served as the basis for the river's inclusion in the system or designation for potential addition. For other applications, the purpose of the review shall be to determine if the proposal would invade the river area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area. To make these determinations, the reviewer shall consult with the appropriate regional office of NPS if the proposal (i) would be located within one-quarter mile of the banks of the river, (ii) involves withdrawing water from the river or discharging water to the river via a point source, or (iii) would be visible from the river. The appropriate regional office of the Forest Service (FS) shall be contacted under similar circumstances when the effected river is on FS lands. Consultation shall be initiated by a written request for comments on the potential impacts accompanied by a description of the project and its location. The reviewer shall consult in other instances when the likelihood of an impact on a river in the system is identified as part of the environmental review. When the reviewer determines there is no potential impact on such a river, the documentation of this determination concludes the review process, unless reinitiation is required under paragraph 10 of this exhibit. In all other cases, the review is completed as specified below in paragraphs 4 through 9 of this exhibit.

4. If the review is at the County or District Office level, the reviewer can request the State Director (see §1940.307 of this subpart) to perform the above consultation. The State Director can in turn make a similar request of the National Office. If not requested to perform the consultation for applications approvable at the County and District Office levels, the SEC shall be informed whenever NPS or FS advises that there is a potential for an adverse impact on a river within the

system or that protective measures need to be included or designed into the proposal. In all cases, consultation shall be initiated by FmHA or its successor agency under Public Law 103-354 and not the applicant. Until consultation is complete, FmHA or its successor agency under Public Law 103-354 shall not approve the application. Should the need for consultation be identified after application approval, FmHA or its successor agency under Public Law 103-354 shall, if still within its power at the time of identification, refrain from making any irreversible or irretrievable commitments of resources which would foreclose the consideration of modifications or alternatives to the project.

5. If NPS or FS advises there is no potential for an adverse effect as described in paragraph 3 of this exhibit, this review process is concluded, unless the need to reinitiate arises. (See paragraph 10 of this exhibit.)

6. Whenever the results of the consultation process include recommendations by NPS or FS to modify the proposal in order to avoid an adverse effect, as described in paragraph 3 above, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe that the Regional Director's recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

7. If NPS or FS advises that the proposal will have an unavoidable adverse effect, as described in paragraph 3 of this exhibit, on a river segment which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system, the FmHA or its successor agency under Public Law 103-354 applicant will be informed by the reviewing office and the application denied on this basis. However, if the State Director disagrees with this determination, the State Director can request the Administrator to review the proposal and attempt to further resolve the matter. The specific reasons for disagreement along with supporting documentation must be included in such a request. Based upon a review of this request, the Administrator shall either inform the State Director that no further consultation is warranted and the application shall be denied or shall request the headquarters staff of NPS or FS to further review the matter. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of this further review and consultation.

8. If NPS or FS advises that the proposal will have an adverse effect, as described in paragraph 3 of this exhibit, on a river segment identified in the Nationwide Inventory, the reviewer shall further consult with NPS

or FS in order to formulate adequate measures or modification to avoid or mitigate the potential adverse effect. The purposes of such measures or modifications is to ensure that the proposal does not effectively foreclose the designation of a wild, scenic, or recreational river segment. Once concurrence is reached and documented with NPS or FS regarding modifications, the State Director shall require that they be incorporated into the proposal as either design changes or special conditions to the offer of assistance. If the State Director is not able to reach an agreement with NPS or FS on appropriate modifications, the Administrator shall be requested to assist in the further resolution of the matter.

9. If an application involves financial assistance or permit approval from another Federal Agency, the FmHA or its successor agency under Public Law 103-354 reviewer shall work with the other agency(s) to determine a lead Agency for the consultation process. When FmHA or its successor agency under Public Law 103-354 is not the lead Agency, the reviewer shall ensure that the lead Agency informs NPS or FS of FmHA or its successor agency under Public Law 103-354's involvement.

10. Once completed, the consultation process shall be reinitiated by FmHA or its successor agency under Public Law 103-354 if new information or modification of the proposal reveals impacts to a river within the System or Nationwide Inventory.

**EXHIBIT F TO SUBPART G OF PART 1940—
IMPLEMENTATION PROCEDURES FOR
THE COASTAL BARRIER RESOURCES
ACT**

1. The Act applies to barrier islands that Congress has designated for inclusion in the Coastal Barrier Resources System. Since coastal barriers are only found in East and Gulf Coast States, no other State Offices fall under the requirements of the Act and, therefore, need be concerned with these implementation procedures.

2. On coastal barriers that are included in the system, the Act prohibits any new expenditures or new financial assistance by the Federal Government. There are some limited exceptions that are contained in Section 6 of the Act and listed in exhibit L of this subpart. Consequently, all of the following actions must be reviewed by the environmental reviewer to determine if they would be located within the System: any application for financial assistance, any proposed direct expenditure of FmHA or its successor agency under Public Law 103-354 funds for construction or maintenance purposes, any request for subdivision approval, and any proposed disposal of real property that includes any form of financial assistance or subsidy to the purchaser. The boundaries of the system can

be determined by reviewing a series of maps passed with the legislation and distributed by the Department of the Interior. Each State Director is responsible for ensuring that those field offices having components of the system within their jurisdictions are aware of the system's boundaries therein.

3. Exhibit L lists the six categories of exceptions, that is, those actions that may be taken within the system. No exception may be implemented, however, without first consulting with the Secretary of the Interior. It should also be noted that the sixth category is more limited than the first five. Besides meeting the consultation requirement for this sixth category, the sponsoring Agency must also determine whether the proposed exception is consistent with the purposes of the Act.

4. For those actions that are reviewed and determined not to be within the System, the environmental reviewer must document this result by checking the appropriate compliance blocks on either Form FmHA or its successor agency under Public Law 103-354 1940-22, "Environmental Checklist for Categorical Exclusions," or Form FmHA or its successor agency under Public Law 103-354 1940-21, "Environmental Assessment for Class I actions," or by so stating this result in the environmental assessment for Class II Actions (exhibit H), depending upon whichever format is applicable to the action under review.

5. For those actions that would be located within the system, one of the following two steps must be taken:

a. If the environmental reviewer concludes that the action does not meet the criteria for an exception, as listed in exhibit L, the reviewer shall so inform the approving official and a final determination made in the manner indicated in §1940.316 of this subpart. If this determination is consistent with the environmental reviewer's conclusion, the action must be denied by the approving official and the affected applicant or party informed of the reason for denial. If it is determined that the action may qualify for an exception, the steps identified in Item b immediately below must be implemented prior to a decision on this question.

b. If the environmental reviewer concludes that the proposed action may meet the exception criteria, the approving official must be so informed. Whenever the approving official agrees or makes a similar determination as a result of the review conducted in Item a immediately above, consultation shall be initiated with the Secretary of the Interior by either the State Director or the Administrator for a National Office activity. FmHA or its successor agency under Public Law 103-354 shall request the Secretary's views as to whether the exception criteria are met and shall provide the Secretary with the following information: